19/41

File No. O Boroughs 41

Legal DEPARTMENT

"A" BRANCH

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Subject:—

Opinions under the Bombay Municipal Boroughs Act; 1925.

P 77 F

File No. O Boroughs/41

Std. Sectt. Slip 44 15 6.

87 A

Contents.

Legal Department Vol. No. O. Boroughs / 1941

1941

S.No.	Compilation No.	Subject.	Pages.
	O. Boroughs/1941	Opinions under the Bombay Municipal Boroughs Act,1925.	
1.	O. No.1100 Confl/ 5-2-1941	Re: Disqualification incurred by a councillor under sec. 12(1)(a)(i) read with sec. 28(1)(a) of the Bombay M. Boroughs Act, 1925.	1 - 2
2.	O.No.1636/ 21-2-1941	Re: Provision for lighting public streets by the Municipality- sec. 68(1) of the Bombay M. Boroughs Act, 1925. (Pl.See also R.L.A's No.8073 dated 13-9-40)	3 - 4
3.	R.I.No.1597/ 14-2-41 O.No.1754/26-2-41	Question whether the President above can function under sec. 19(2) of the Act as the term of the Board of Councillors has expired, or whether the life of the existing Board will extend to and expire with the day before the date of the meeting of the new Board.	5-8
4.	O.No.1894/ 4-3-41	Re: Levy of terminal tax on crude oil by the Municipality Question whether Govt. is competent to take action under sec. 102 of the Act when ~~an~~ on complaint made or otherwise it is found that the tax leviable by the Municipality is unfair.	9 - 14
5.	O.No.927/ 31-1-41	Re: Recovery of the amount by Govt. from the grants of the Municipality. Question whether the recovery can be effected under the provisions of sec. 218(1) of the B.M.B. Act,1925.	15 - 16
6.	R.I.No.1337/41 O.No.2612/ 24-3-41	Re: Expenditure incurred by the Barsi Municipality in respect of erection o f a statue of Mahatma Gandhi after passing a resolution, Collector by his order under sec. 214(1) of the B.M.B.Act, 1925 ordered suspension of the ~~erection~~ of such resolution. Question whether there is sufficient legal justification for passing such order under sec.214(1).	17 - 20
7.	O.No.1725/ 25-2-41 O.No.2793/ 27-3-41	Re: Levy of octroi duty on vegetable ghee imported into the Municipal limits. Question whether the levy of octroi on import of vegetable ghee at the rate of Rs.2-8-0 per maund would be legal. (Pl. See R.L.A.'s No. 11252 dated 23-12-40)-	21 - 32

S.C. 20/5

8.	R.I.Nos.2300 & 3349/41 O.No.2982/ 2-4-41	Re: failure to make a reasonable and adequate provision for maintaining primary schools under sec.68(1)(p) by sanctioning an unjustifiable reduction in the staff of primary teachers. Question Govt. can take action against the Municipality under sec. 218 of the B.M.B. Act,1925 33-38
9.	O.No.219-Confl/ 18-4-41	Re: Draft of G.D.,G.R. regarding primary education.Malegaon Municipality. Discharge of Primary teachers. Question whether the G.R. is in order. 39-40
10.	O.No.3570/ 23-4-41	Re: Collector's'order discontinuing the councillor-ship under sec.28(1)(a)read with sec.12(2)(b) of the B.M.B.Act, 1925. Question whether the Collector's order is legally valid. 41-42
11.	O.No.2932/ 1 8-4-41	Re: Plots laid out by the Collector out of Govt, waste land under sec. 38 of the B.L.R. Code, after preserving seme area for roads. The Road area has been transferred to the Municipality for maintenance. Question whether the roads should be constructed at the cost of Govt. or whether the plot holders can be asked to bear the cost secs. 38 & 115 of the B.L.R. code and B.M.B. Act, 1925 respectively. 43-48
12.	O.No.3718/ 26-4-41	Question whether Govt. who are in charge of the water works in Poona are legally bound to provide the 7 fire hydrants on Kennedy Road in front of Infectious Diseases Hospital and Raja Bahadur Motilal Mills. 49-50
13.	O.No.4133/ 7-5-5 41	Re: Roads. Specially reserved by Govt. all roads not so reserved vest in the Municipality under sec. 63(2)(f) of the B.M.B.Act, 1925. Question regarding maintenace of 51-52
14.	O.No.4309/ 10-5-41	Re:Power of Govt. to dissolve or superside a Municipality if it is not competent to perform the duties imposed on it under B.M.B.Act,1925. Sec. 219(1) of the Act. 53-56
15.	O.No.4505/ 16-5-41	Question 1) whether the resignation of the members of the Thana Municipality is valid, and 2) whether the action taken by the Collector under sec.4(4) is valid. 57-72
16.	R.I.No.38/ 3-1-40 O.No.995/ 3-2-41.	Re: Arrears of Privy tax in respect of Kalyanpur settlement in Sholapur. Question whether Govt. is liable to pay the arrears of the year 1930-31. 73-80
17.	O. No.4414/ 14-5-41	Re: Arrears of Privy tax in respect of Kalyanpur Settlement

		in Sholapur. Question whether Govt. is liable to pay the arrears of the year 1930-31
18.	O.No.4864/ 27-5-41	Re: Leasing out public street to the Parsi Panchayat Surat by the Municipality, pipe line under the surface of the street. Question as to the rights over the soil and sub-soil of the street. 85-86
19.	O.No.1862/ 3/3/41	Re: Payment of maintenance charges at the rate of 6 annas per head per diem instead of at the rate of 4 annas, by the Municipalities in respect of lunacies coming from their respective areas. Refusal of payment at higher rates by - Question as to the suitable course to be adopted in this respect for the recovery from the Municipalities. 87-88
20.	O.No.4661/ 22-5-41	Re: Construction by Ahmedabad Municipality of a recreation centre on land belonging to it and handing over the same the Labour Welfare Department of Government on certain terms and conditions. Question whether this transaction should be evidenced by a formal agreement. 89-90
21.	O.No.4890/ 28-5-41	Question whether fees for licences to construct projections over land statutorily vesting in Municipalities can be levied by the Municipalities or by Government. 91-94
22.	O.No.5549/ 23-6-41	Question whether the order of the Collector rejecting the nominations of candidates for election to the Broach Municipality from a non-Muhammadan constituency with reserved seats for failure to state in the nomination papers whether or not they belonged to the community or communities for which the seat or seats were reserved as provided in the rule 13(1)of the Election Rules of the Municipality, is correct. 95-96
23.	O.No.5735/ 30-6-41	Question whether under sec.34(2)(a) of the B.P.B. Act,1926 read with rule 2 of the Rules framed by the Sholapur Municipality under clauses (f) and (g) of sec.57(1) it is competetent for the chief officer to fine, suspend, reduce, etc. municipal servants in receipt of salary exceeding Rs. 30/- but not Rs. 50/- per month. 97 - 100
24.	R.I.No.6323/ 18-7-41	G.L.,G.D.No.5227/11058-A dated 7-7-41 Re: Sholapur Municipality Chief

		Officer's power to fine, suspend, reduce, etc., municipal servants.101-102
25.	O.No.6707/ 30-7-41	Re: House Tax Rules of the Godhra Municipality Levy of House tax on buildings and lands separately. Insertion of a rent rule levying a collective tax. 103-106
26.	R.I.No.7941/41 O.No.7327/ 20-8-41	Question whether the outgoing President is competent to call a meeting for election of a new President under sec. 19(1) of the B.M.B.Act, 1925 or whether such a meeting should be called by the Collector as required by sec.23(2) of the Act. 107-108
27.	R.I.No.6502/41 O.No.6839/ 4-8-41	Re: Laying of drain pipe under the street vested in the Municipality. Repairs to such drains affecting the surface rights of the Municipality Insertion of a new clause in the tripartite agreement between the grantee, the Municipality and the Government, 109-112
28.	O.No.7160/ 13-8-41	Re: By Laws of Ahmedabad Borough Municipality under sec.61(1)(b)(ii) of the B.M.B. Act, 1925 for licensing and regulating the manufacture of ice. Sanction of Government to the said By - Laws. Question whether ice is an article intended for human food or drink, within the meaning of sec.61(1)(b)(ii) of the Act.113-114
29.	O.No.7718/ 1-9-41	Questions - 1) Whether the Chief Officer is competent to sanction the withdrawal of the criminal complaint filed with the approval of the Administrator appointed under sec.219(2)(b) of the B.M.B.Act 1925, in respect of illegal erection. 2) Whether it will not be correct to say that the approval given by the Administrator tantamounts to the direction of the Standing Committee under Sec.200(1) of the B.M.B.Act,925, and if so it is not necessary to obtain the sanction of the Standing Committee; 3) Is the Chief Officer competent to consent such compromise, and 4) If the Chief Officer's action is illegal what action can the Municipality take in such matters etc. 115-118
30.	R.I.No.8907/ 18-9-41	Re: G.L.,G.D.No.S.227-A,dated 15-9-41 Re: Criminal and Civil suits filed by Kurla Municipality. (R.L.A's No.7718/1-9-41 119-120
31.	O.No.9445/ 1-11-41	Question whether action under sec. 218 of the B.M.B.Act,1925 can be taken against the Municipality for its failure to

	perform the duty imposed upon it by Sec. 70 of the Act.	121-122
32. O.No.8292 22-9-41	Re: Charging of fees to the Municipality for the opinion given by Government. No fee can be charged when point relates to an interpretation of the Government of India Act 1935 and is of general importance.	123-124
33. O. No.9676/ 10-11-41	Re: Footsteps of a house which formed an encroachment on the public street land. Notice issued by the Municipality to land lord for removing the foot steps. Question as to what course of action Government should adopt in order to safeguard the interest of Govt. in the subsoil of the street land under the footsteps.	125-130
34. O.No.10196/ 27-11-41	Questions. 1) Whether an inquiry is once instituted on the recommendations of the Municipality under proviso (b) to sec. 34A(1) of the B.M.B.Act, 1925 any subsequent resolution passed by the Municipality requesting Government to stop the inquiry will in any way affect the orders issued by Government for holding the inquiry; 2) If the inquiry is allowed to continue whether Government will have power to veto the appointment of the Chief Officer in view of the resolution of the Municipality.	131-132
35. O.No.10518/ 8-12-41	Question whether Government has right to levy any fee in respect of the following:- 1) Projections of the type specified in sec.143 of the B.M.B.Act, 1925; 2) Other projections which are so located as to affect the Municipality's interest in the street.	133-134
36. O.No.10735/ 12-12-41	Re: Removal of a Chief Officer by passing a resolution which is not in accordance with the provisions of sec. 33(2) of the B.M.B. Act, 1925. Question whether under sec. 214(1) of the Act it is possible for the Collector to suspend such a resolution which has already been executed or whether such suspension will operate retrospectively so as to restore status quo ante.	135-136

5/1/55

Section 15(1)(a)(i) of the Bombay District Municipal Act, 1901, section 12(1)(a)(i) of the Bombay Municipal Boroughs Act, 1925 and section 9(1)(c)(i) of the Bombay Local Boards Act, 1923 are in similar terms and provide for the disqualification of a person to be a councillor or member as the case may be when he has been sentenced by a criminal court to imprisonment or whipping for an offence punishable with imprisonment ~~or whipping for an offence punishable with imprisonment~~ for a term exceeding six months, or to transportation. such sentence not having been subsequently reversed or quashed, if and so long as such sentence has not expired, unless he has by an order of Government (notified in the Official Gazette in cases under the Local Boards Act) been relieved from the disqualification arising from such sentence; and sections 15(2)(a), 28(1)(a) and 30(1)(a) of the respective Acts all of which are mandatory provide that the office of the councillor or member concerned who has incurred such a disqualification shall become vacant. Consequently in the case of councillors or members of these bodies who may be known or suspected to have been sentenced by a criminal court to imprisonment (or whipping) for an offence punishable with imprisonment for a term exceeding six months etc. as provided in the relevant enactments it would be necessary to decide whether their offices have or have not become vacant and it is immaterial whether or not the offences for which these councillors may have been sentenced to imprisonment involve or do not involve any moral turpitude. Any such decision or declaration should not, however, be made until the expiry of the period of limitation for an appeal against the sentence inflicted or until the appeal, if any, filed within the time prescribed, is decided and the conviction upheld. (See R.L.A's opinion No.5211, dated 13th October 1932.)

2. Under section 15(3) of the Bombay District

Municipal Act and section 28(2) of the Bombay ~~District~~ Municipal Boroughs Act the authority competent to decide whether a vacancy has arisen is the Collector. It is open to him to decide this question either on an application made to him by any person or on his own motion. It would accordingly not ~~be~~ be necessary for the Collector to wait for an application from some person when information about the disqualification of a co uncillor by reason of his conviction is in fact true. Under section 30(1) (a) of the Bombay District Local Boards Act no formal decision about the office of such councillor becoming ~~an~~ vacant appears necessary. As soon as the councillor incurs the disqualification he shall cease to be a member and his office becomes vacant. Consequently it is only after the expiry of the period of limitation for an appeal or after the appeal, if any, filed within the time prescribed is disposed of ~~an~~ upholding the conviction that necessary steps can be taken to hold a by-election under sections 32 and 33 to fill up the vacancy.

Sd/-P.N.M.
Remembrancer of Legal Affairs.

U.N. to G.D. No. 1100-Confl., dated the 5th February 1941.

B.K.U. 15/5/ 40.

The obligatory duty under section 68(1)(a) of the Bombay Municipal Boroughs Act, 1925, refers to making provision for lighting public streets, places and buildings and requires that such provision shall be reasonable and adequate. The performance or non-performance of this duty for purposes of section 318 of the Act must be judged from th factual provision made by the Municipality in the matter of lighting public streets, etc. and not necessary or even primarily from the financial implications thereof, viz. whether as an economic proposition the manner in which this lighting has been provided is economic, reasonable or extravagant. In other words, the criterion for determining whether there has or has not been a default within the meaning of section 318 read with section 68(1)(a), will be the total quantity of light in relation to public streets, places and buildings provided by the municipality and the question whether that or even better provision could have been made at the same or even smaller cost if another or more efficient method of lighting had been adopted, will not be material for this purpose. On this point the view taken by Deputy Secretary, General Department in paragraphs 2 and 3 ante is correct.

2. From the note prepared by the Municipal Engineer of Nasik Municipality it appears that the Municipality has arranged for 101 Petromaxes and six hundred Kerosene lights and at present the streets are roughly lighted 1,8000 hours a year as against 1,100 hours only with electric lighting. It is stated that due to refusal on the part of the Nasik-Deolali Electric Supply Company to light all the roads of the Municipality, use of Petromax and Kerosene lights continued in part of the town. If this is a correct statement of fact, it would be clear that the Municipality had to incur additional expenditure besides payment of charges for the electric lights to the Company. This factor

does not appear to have been considered either by the Collector or the Commissioner. When in the past part of the town was lighted with Petromax and oil lamps, as against the other part lighted with electric lamps, the Collector did not consider such lighting as "unreasonable" or "inadequat but x he apparently considers x it so now, when in the whole of Nasik there are Petromax and oil lamps for street lighting. In view of this fact, the argument of the Collector and the Commissioner does not appear to be convincing. What would be required to be "reasonable and "adequate" is one and the same matter, viz. the lighting in question and not the cost thereof. It will not be correct to refer only the adequacy to the lighting and judge the reasonableness, not with reference to the lighting as such, but with reference to the financial cost of such lighting. The reasoning of the Collector, Nasik and the Commissioner, Central Division, does not, therefore, appear to be sound.

b Sd/-P.N.M. 20/2
Remembrancer of Legal Affairs.

U.R. to G.O. , No. 1636 , dated the 21st February 1941.

B.R.D. 15/5/ 4c.

5 to 7

1597
14/2/41

Submitted.

In his letter No.2093 dated 16-1-41 addressed to the Collr. of Broach and Panch Mahals the President Broach Borough Muncy. states that as the first meeting of the existing Board was held on 17-1-38 the term of office of the councillors commenced with effect from that date under sec.25(2)(a) of the Bom. Muncy. Boroughs Act, 1925 and consequently under sec. 25(1) of the Act, the triennial period of the Board expired on 16-1-41. Prior to the expiry of the term of office of the Board the usual steps were taken for holding general election, but for the reasons stated by the Collr. of Broach & Panch Mls. in his endorsement no.B.C.M.-31 dated 25-1-41, the elections in non-muslim wards Nos. 1 and 2 are still incomplete. The elections for these wards have been fixed for 7-3-41. It is thus clear that the term of office of the old Board terminated on 16-1-41 and as the elections are not complete the new Board cannot function. In view of this fact the President desires to know that since the term of the Board has expired and its term has not been extended by Govt. under sec. 5(1) of the Act, he alone can function under sec. 19(2) of the Act till the first meeting of the newly constituted Board or whether the life of the existing Board also will extend to and expire with the day before the date of the meeting of the new Board.

Sd/-R.I.E. 22/2

A.L.S.

Soon and returned.

The view taken at p.9 ante is

legally correct."

Sd/-V.N.J.
22/2/41

K.L.S. Sd/-P.N.N.. 2/2

U.R. to G.D.No. 1754, dt. 26-2-1941.

B.K.S. 15/5/ 40.

Submitted.

For facts of the case, attention is invited to para. 1 of this office note dated 26-11-40 underlying R.L.A's opinion No.10509, dated 29-11-1940. The Thana Municipality levies terminal tax on crude oil at six pies per gallon under the rules sanctioned by Government. As, however, the major portion of the tax on fuel oil fell on a single Company, Govt. considered that the method of levy adopted by the Municipality was unfair and it, therefore, considered that the rate of terminal tax on crude oil should be reduced to 8th of the present figure. With a view to carry out this object, Government directed the Commissioner, N.D., to give notice as required by section 102 of the Bombay Municipal Boroughs Act, 1925, to the Thana Municipality that if it refused to reduce the said tax within one month from the date of receipt of the notice, Government would be compelled to suspend the levy of the terminal tax on that item (vide C.D.Memo No.4207/33-A, dated 9-9-40). In its resolution No.229 dated 24-10-40, the General Board of the Thana Municipality approved the recommendation of the Standing Committee to reduce the levy of terminal tax on crude oil by two pies per gallon. In C.D.Memo.No.4207/33/22376, dated 2-12-40, the Government directed the Commissioner to inform the Municipality that Government did not accept its proposal to reduce the tax by two pies per gallon and that if the Municipality failed to reduce the rate to 8th of the present rate, Government will be compelled to take action under section 102 of the Act. Accordingly a copy of the said Memo. was forwarded by the Collector of Thana to the Thana

p.33 ante

pp-37-39 ante.

pp-45-46 do.

B.R.-. 15/5/ 40.

Municipality calling upon it to take steps within 15 days to reduce the terminal tax on crude oil to 4th of the present rate. The Municipality, however, in its resolution No.342, dated 15-1-1941 resolved that it did not see any valid and cogent reason for modifying its previous resolution dated 24-10-40 and it held that as the levy of the terminal tax on crude oil at its present rate was neither unfair in its incidence nor obnoxious to the interest of the general public, Govt cannot exercise its powers under section 102 of the Bombay Municipal Boroughs Act, 1925. The question for the A.G.A's consideration is whether in view of the circumstances of the case, Government is competent to take action under section 102 of the Bombay Municipal Boroughs Act, 1925.

pp.53-55 ante

p-39 ante

H.L.A.

I agree. The tax is not only excessive but quite unfair in its incidence. Govt. will be within its rights to invoke the provisions of sec. 102 of the Bom. Mun. Bor. Act.

Sd/-H.L.A.
27/2

U.L. to G.L.No. 1894, dt. 4-3-1941.

B.R.G. 15/3/ 40.

Office of the R.L.A.

The Bombay Primary Education Act, 1923 is an enactment sui generis in character and the powers exercised and duties performed under that Act are exercised and performed under that Act and not under the Bombay Municipal Boroughs Act, 1925 (vide R.L.A's opinion No. 4410, dated the 9th August 1934 followed in R.L.A's opinions Nos. 135-Confl., dated the 2nd July 1937 and 295-Confl., dated the 27th November 1940). Failure to return to Government the excess amounts paid on account of grants made to the Godhra local authority under the Primary Education Act would not be a default in the performance of any duty imposed on a municipality by or under the Bombay Municipal Boroughs Act, 1925 (Bom. XVIII of 1925) or by or under an enactment for the time being in force on the part of the Godhra Municipality within the meaning of section 18(1) of the Bombay Municipal Boroughs Act, 1925. Consequently no action under that section would be legally feasible against the Godhra Municipality. As advised by the Remembrancer of Legal Affairs in his opinion No. 4976, dated the 2nd June 1938 the only course now open to Government would be to take steps to recover the amount through Court by a regular suit. Since however the Godhra Municipality has already filed a suit against Government to recover a part of the amount which has been deducted by Government from its annual grant and the question about the legality of the claim of Government to recover the overpayment is under adjudication in the suit, Government ~~x~~ may await the decision of that suit.

Sd/-R.M.M.
Remembrancer of Legal Affairs.

U.K. to D.D., No. 927 dated the 1st January 1941.

B.K.S. 15/5/ 40.

R.D.No.1337/41

Submitted.

In its resolution No.157 dated 3-9-40, the Barsi Borough Municipality adopted the resolution of the Special Sub-Committee and sanctioned an expenditure of Rs.2100 for erecting a statue of Mahtma Gandhi. In his order No.M.U.N. 2-362 dated 4-1-1941, made under sec.214(1) of the Bom. Munl. Boroughs Act, 1925, the Collr. of Sholapur held that when the financial condition of the Muny. was precarious, such an extravagant expenditure was harmful to the public interests. He therefore, ordered that the execution of resolution No.157 dt.3-9-1940 should be suspended. In pursuance of section 214(2) of the said Act, the Comsr. C.D. confirmed the said order of the Collr. and directed that the order should continue in force permanently. A copy of the order x is submitted to Govt. as required by sect.214(3) of the Act. The question raised by the Dy. Secy. C.D. for the R.L.A's consideration is whether there is sufficient legal justification for passing such order under sec.214(1) of the Bom. Munl. Boroughs Act, 1925.

pp-5-6 ante.

p.13 ante

p.15 ante

sd/- L.A.K. 4/3

A.L.A. B Since the expenditure in question is wholly unnecessary and indefensible in the light of the financial condition of the Mpty., action under sec. 214(1) of the B.M.B. Act, 1925 would be legally competent.

A Attention is invited to R.L.A.'s No.1035 dt. 3-5-1940 regarding the corresponding provision in Sec. 176 of the B.P.M.Act, 1901 (see entry No.239 at p.37 of Supplement II to the R.L.A.'s Digest of Opinions).

A-A. , B - B in my note above.

sd/-V.M.C. 15.3.41

R.L.A. sd/-P.M.M. 16/3

U.N, to the C.D.No. 2612, dt.24-3-1941.

B.Z.S. 15/5/ 4c.

Statement of the Case for the opinion of the Advocate General.

The Bhusaval Borough Municipality proposes to raise the octroi duty on vegetable ghee from 0-4-0 to Rs. 2-8-0 per maund (i.e. 80 tolas x 40 seers). In his letters Nos. 473, dated the 10th July 1940 and 551, dated the 1st August 1940 the President, Bhusaval Municipality states that as most of the ghee imported for sale in Bhusaval is found to be adulterated, and with a view to put check to its adulteration with pure ghee, the Municipality proposes to levy a rate of octroi on the import of vegetable ghee which is sold at a very low rate and which it is feasible to be mix with pure ghee. The General Department held that the proposal regarding the increase in the rate of octroi on vegetable ghee at a high rate of Rs. 2-8-0 per maund was not in accordance with the principles laid down in the letter from the Government of India, Department of Education, Health and Lands, No. 157-L.S.G., dated the 27th November 1928 to the Government of the Punjab. The Remembrancer of Legal Affairs was, therefore, requested to advise whether a tax imposed on vegetable ghee so as to discourage the import of such product or to make adulterationwith pure ghee unprofitable can be said to be for the purposes of the Bombay Municipal Boroughs Act, 1925". For the reasons stated in his opinion No. 11252, dated the 2nd December 1940, the Remembrancer of Legal Affairs (Mr. Dhurandhar) advised that "merely because the motive of a

Municipality in imposing a tax is not the raising of revenue, but is a non-fiscal purpose, so long as such purpose is within the scope of its power, it cannot be held that the Municipality is acting ultra vires .....If a duty or tax is imposed for carrying out the purposes of the Act and is within the power given to the Municipality, it is immaterial if its result is to restrict the consumption of any article In adopting this view, the Remembrancer of Legal Affairs relied upon his previous opinion No. 820, dated the 9th February 1937.

2. For the reasons stated in paragraph 1 of his note dated the 23rd January 1941, the Deputy Secretary, General Department considers that the view expressed in the Remembrancer of Legal Affair's opinion No. 11252, dated the 23rd December 1940 is opposed to the view expressed by the Remembrancer of Legal Affairs (Mr. Sen) in his opinion No. 820, dated the 9th February 1937 and that inaccordance with the latter opinion the levy of proposed octroi, which is not primarily, for the purpose of raising the revenue, would be ultra vires.

3. The Advocate General is requested to state whether he agrees with the view expressed in the Remembrancer of Legal Affair's opinion No. 11252, dated the 23rd December 1940 and whether the levy of octroi on import of vegetable ghee at the x rate of Rs. 3-8-0 per maund would be legal.

Sd/-P.N.M.
Remembrancer of Legal Affairs.

U.O. to the Advocate General, No. 1725 dated the 25th February 1941.

B.R.O. 15/5/ 40.

I do not agree with the view expressed in the Opinion of the A. G. L. A. dated the 23rd of December 1940 and am of opinion that the levy of the proposed octroi would be illegal.

2. Section 73 of the Act authorises the imposition of the taxes therein mentioned "for the purposes of this Act" The last mentioned words in the section would mean "in order to raise revenue needed to meet the expenditure in respect of the duties and powers of the Municipality as laid down by the Act" The present tax is proposed to be imposed avowedly not for the purpose of raising such revenue but for the purpose of discouraging the import of a certain article the import of which the Municipality consider to be undesirable.

3. It has been suggested that the imposition is for the purposes of the Act within the meaning of the section, in as much as, section 71 (r) empowers the Municipality at its discretion to spend out of the Municipal fund for a measure not specified in section & 66 which may be likely to promote inter alia the public health. This contention overlooks the wording of the sub section. What the Municipality may do under it is to expend out of the Municipal fund moneys <u>on a measure</u> likely to promote the public health. That is not what is proposed to be done in the present case. What is proposed is to use the imposition of the tax as an instrument for the promotion of public health. This is clearly outside the purview of the sub section.

4. Reference has been made to the powers of taxing authorities to levy taxation for what are called non-fiscal purposes. It appears to me that these observations are not relevant. The references quoted are in respect of the taxing powers of legislative bodies with plenary powers. They can have no application to the taxing powers of a local authority which are circumscribed by the statute constituting the local authority.

5. It is a matter of doubt whether a tax imposed at so high a rate could appropriately be described as "octroi" within the meaning of section 73(4).

Sd/-
Advocate General.

5-3-41.

B.K.S. 15/5/ 4c.

Submitted.

As ~~xxxiiiii~~ desired by the Secy. C.D. the Adv. General was requested to state whether he agreed with the view expressed in R.L.A's opinion No. 11252 dt. 23-12-1940 For the reasons given in his opinion dt. 5-3-1941, the Adv. General does not agree with the view expressed in R.L.A's opinion No. 11252 dt. 23-12-1940 and laws that the levy of the proposed octroi on import of vegetable ghee would be illegal.

2. A copy of the Adv. General's opinion dt. 5-3-41 is forwarded herewith.

Sd/- A.F.B.
10/3

A.S. Sd/- R.I.K. 10/3

A.L.R. Id/-
18.3.41

Id/-
20/3

R.L.A. Sd/-F.N.M.
24/3

L.R. to C.D.No.2793, dt. 27-3-1941.

B.R.S. 15/3/ 4c.

R.9.No.2300&334/41.

Office of the H.L.A.

The question for consideration of the Remembrancer of Legal Affairs is whether it is possible to take action against the Malegaon Municipality under section 21[illegible] of the Bombay Municipal Boroughs Act, 1925, for failing to make a reasonable and adequate provision for maintaining primary schools under section 68(1)(p) by sanctioning an unjustifiable reduction in the staff of primary teachers.

2. It is true that the Bombay Primary Education Act, 192[illegible] is an enactment sui generis in character and powers exercised and duties performed by the Municipality qua a local authority are exercised and performed xxxkkx under that Act and not under the Bombay Municipal Boroughs Act, 1925 (See Remembrancer of Legal Affairs opinion No.4410, dated the 9th August 1934, followed in Remembrancer of Legal Affairs' opinions No.135-Confl., dated 2-7-1937 and 295-Confl., dated 27-11-1940). Consequently if a municipality makes a default in exercise of its powers or in the performance of its duties as a local authority under the Bombay Primary Education Act and the rules made thereunder it would not necessarily or ordinarily constitute a default made by the municipality within the meaning of section 218 of the Bombay Municipal Boroughs Act, but in certain circumstances it may be possible to hold that default in the exercise of certain powers or in the performance of certain duties under the Bombay Primary Education Act, 1923, may either lead to or itself involve also a default x within the meaning of section 218 of the Bombay Municipal Boroughs Act. A contrary view viz., that in no circumstances can duties and powers of a local authority under the Bombay Primary Education Act be subject to the controlling provisions of e.g. section 218 of the Bombay Municipal Boroughs Act, appears to be opposed to the intention of the legislature, for the words 'or by or under an enactment for the time being in force" which are to be found in section 218(1) of the Bombay Municipal Boroughs Act,

were actually inserted in section 127(1) of the Bombay Local Boards Act by section 3 of Bombay Act V of 1932 with the very object of compelling a local board to perform duties imposed upon it as a local authority under the Bombay Primary Education Act (See the Statement of Mr. Dabank Rao in the course of the debate on the Bill). No provision has been made in the Bombay Primary Education Act for compelling a local authority to exercise its powers and perform its duties as a local authority under that Act. This appears to be so apparently for the reason that the words "by or under any enactment for the time being in force" in section 218(1) of the Bombay Municipal Boroughs Act and section 127(1) of the Bombay Local Boards Act are to be taken as sufficiently wide to cover defaults made under the Bombay Primary Education Act. In this view of the matter, even assuming that the Bombay Primary Education Act is sui generis, it appears that appropriate action can be taken against the Malegaon Municipality under section 218(1) of the Bombay Municipal Boroughs Act for the default made in its duty of maintaining an adequate staff of primary teachers.

3. It is true that rule 3(1) of the Bombay Primary Education Rules, 1924, provides that a local authority shall maintain an adequate number of primary schools and that rule 4(1) provides that a local authority shall employ an adequate administrative, supervising, inspecting and teaching staff including such attendance officers as may be necessary. But the Bombay Primary Education Rules, 1924, are made not solely under the Bombay Primary Education Act, 1923, but also under the Bombay Local Boards Act and the Bombay Municipal Acts. Section 67(1)(p) of the Bombay Municipal Boroughs Act provides that it shall be the duty of every municipality to make reasonable and adequate provision for establishing and maintaining primary schools. The duty of making adequate provision for maintaining

primary schools under the Bombay Municipal Boroughs Act includes the duty of maintaining an adequate staff of primary teachers for such schools while there is no specific provision in the Bombay Primary Education Act requiring a local authority to maintain an adequate staff of primary teachers. Consequently the duty of maintaining an adquate staff of primary teachers must be deemed to have been cast on the local authority as a municipality under section 68(1)(p) of the Bombay Municipal Boroughs Act. In the present case since Government in the administrative department are satisfied that the Malegaon Municipality has failed to maintain an adequate staff of primary teachers by sanctioning the proposal of its school board to reduce the staff, it can be held that the Malegaon Municipality has defaulted in the performance of the duty imposed on it under section 68(1)(p) and action under section 218 of the Bombay Municipal Boroughs Act, 1925, would be legally feasible (Cf. Remembrancer of Legal Affairs' opinion No.2658, dated 13-3-40).

Sd/-P.N.M. 1/4
Remembrancer of Legal Affairs.

U. R. to E.D. No. 2982, dated the 2-4-1941.

E.E.S. 16/5/ 40.

Submitted.

In R.L.A's opinion No.2982 dt. 2.4.1941, the E.D. has advised that as the Malegaon Borough Municipality failed to maintain an adequate Staff of the primary teacers, it can be held that the Municipality has defaulted in performance of the duty imposed on it under Sect. 68(1)(p) of the Bom. Municipal Boroughs Act, 1925, and consequently action under Sect. 218 of the Act would be legally feasible.

"The draft G.R. at pp 195-196 ante as slightly amended is in order "

Sd/-V.N.S.
17-4-41.

R.L.A. Sd/-P.N.M. 17/4

U.R. to E.D.No. 210 -Confl., dt. 18-4-1941-

B.K.S. 16/5/ 4c.

Office of the R.L.A.

Attention is invited to the Remembrancer of Legal Affairs U.R. to E.D. No. 268, dated the 15th January 1935 where it is stated: "Unless therefore it is proved that the earnings of a member of a joint Hindu family from the employment of a municipality or a local board are thrown in the common stock or blended with the joint property, other members cannot be held to have such interest therein as would be sufficient to disqualify them from becoming or continuing to be members of the said bodies. The question is one of fact in each case and it will have to be decided on its own merits." This opinion was followed by the Remembrancer of Legal Affairs in his opinion No. 450, dated the 25th January 1937 where he further observed: "Under the Gains of Learning Act, 1930, all gains of learning, whether the learning be special or ordinary are the self-acquired property of the acquirer. In both of the present cases the employees can claim the earnings as their self-acquired property. But if they voluntarily throw the m into the common stock, they become part of the property of the joint Hindu family. But a clear intention to waive their separate rights must be established and such intention will not be inferred from the mere fact of their allowing the other members of the family to use their earnings conjointly with themselves (Mulla's Hindu Law, 8th edition p. 247)". It is therefore clear that from the only admitted fact that Vadilal Maganlal, an employee of the Godhra Municipality, lives with his father Maganlal, a municipal councillor, or from the absence of denial that they are members of a joint Hindu family, it does not necessarily follow that the earnings of Vadilal are thrown into the common stock so as to form part of the property of the joint Hindu family. The several assumptions

made by the Collector in his order at p.19 ante are not therefore warranted by any evidence. It was not for Mr. Maganlal to prove that his son Vadilal kept his earnings separate and did not throw them into the common stock of the family. In the absence of clear evidence that Vadilal voluntarily threw his earnings into the common stock of the family it was not competent for the Collector to declare that his father Maganlal was disabled from continuing to be a councillor. There is no such evidence on record. Consequently the order of the Collector disqualifying Mr. Maganlal is not legally valid on the evidence which was before him at the time of passing the order.

Sd/-P.N.M. 21/4
Remembrancer of Legal Affairs.

U.R. to the G.D., No. 3570 dated the 23rd April 1941.

B.K.C. 16/5/ 4c.

It is not understood what purpose can be served by setting aside the order of assignment for street purposes under section 38 of the Land Revenue Code since the land in question is not intended to be used for any other purpose. Section 38 of the Land Revenue Code itself, however, contemplates a change in user of the lands assigned for special purposes thereunder and there does not appear to be any legal objection to modify or set aside an order passed under that section.

2. The principal question sought to be raised by the Deputy Secretary, Finance Department, in his note dated 13th January 1941 at pages 51-52 ante appears to be whether section 115 of the Bombay Municipal Boroughs Act, 1925 would or would not be applicable to the streets in question. The answer to this question is in the affirmative for reasons given below:

Section 115(1) deals with "any street not being a public street", or "any part of such street, within the municipal borough". It is therefore necessary to consider whether the streets in question are public streets within the meaning of section 3(16). The definition of "public street" as given in section 3(16) refers to three classes of streets, viz :-

(a) over which the public g have a right of way; or

(b) heretofore levelled, paved, metalled, hannelled, sewered or repaired out of municipal or other public funds; or

(c) which under the provisions of section 115 or 116 is declared by the municipality to be, or under any other provisions of this Act becomes a public street.

The streets now under consideration were laid out recently and are out of lands which are the property of Government and not in the lawful occupation of any person or aggregate of persons (See section 38 of the I Land Revenue Code). Consequently the public cannot be said to have a right of way over these streets, although Government may have intended to permit and may have actually permitted the public to use these streets. Such permissive user by the public ~~xxxxxxxxxxxxxxxxxxxxxxx~~ will not convert these streets into "public streets" within the meaning of section 3(16)(a) of the Bombay Municipal Boroughs Act, 1925. The streets in question do not also fall under category (b) or (c) specified under section 3(16) and consequently must be looked upon as private streets within the meaning of section 3(17), although the soil of these streets vests in the Crown. In respect of these streets, therefore, the Standing Committee will be competent to exercise its powers conferred under section 115 of the Bombay Municipal Boroughs Act, 1925.

3. It may be pointed out here that while under section 38 of the Land Revenue Code the Collector is competent to assign the vacant area for road purposes, there is no legal authority for transferring the said area to the Municipality, without that body's consent, for maintenance and for being vested in it for the purposes of section 68(1) of the Bombay Municipal Boroughs Act as directed by the Collector at page 5 ante. Since the streets in question would be new streets within the meaning of section 117 of the Boroughs Act, it would be open to the Municipality at its own option either to lay out and make new public streets in respect of the area in question under section 114 or to declare

these streets as public streets in the manner provided in section 115(2) or section 116. Since under section 68(1)(i) it becomes the duty of every municipality to make reasonable and adquate provision for maintaining public streets, it will not be open to owners of land to lay out streets and without the consent of the Mpty. to dedicate them for public use and thereafter to claim that they have become public streets maintainable by the Municipality. In the present case, therefore, it will not be legally in order to compel the Municipality to construct roads and gutters in the said area at its own cost and Government may either construct these roads and gutters at its own cost or leave the streets as ~~is~~ they stand at present so that the Municipality will be free to exercise its powers under sections 115, 130 etc. For the reasons urged by the Municipality in its letter at pages 9-13, by the Commissioner, Central Division, in paragraph ~~3~~ 2 at page 38 and by the General Department in paragraph 3 at page 46 ante it ~~s~~ appears that as a matter of equity the requisite cost of constructing these streets should be borne by Government. It is unnecessary for the purposes of the present reference to consider whether section 117 is or is not applicable to Government laying out or making new streets in their own plots, but prima facie it appears that when disposing of Government land by division into plots with new streets laid out, it would be advisable to follow the procedure prescribed insection 117 of the Bombay Municipal Boroughs Act.

Sd/-P.N.M. 31/3
Remembrancer of Legal Affairs.

U. R. to R.D., No. 2932, dated the 18th April 1941.

B.K.S. 16/5/ 40.

Office of the R.L.A.

Since the water-works in question are owned and managed solely by Government and there is no agreement with the local authority binding Government to provide fire hydrants at its own cost, the view expressed in the opening portion of paragraph 1 of the draft at p. 45 ante is legally in order.

Sd/-P.N.M. 25/4
Remembrancer of Legal Affairs.

U. R. to the P.W.D., No. 3715 dated the 26th April 1941.

B.E.S. 16/5/ 4c.

Office of the R.L.A.

Since the roads in question have already vested in the Bhusaval Municipality under section 63(2)(f) of the Bombay Municipal Borough Act, 1925 by reason of their not being specially reserved by Government, any order or Government deprovincializing these roads and handing them over to the municipality now would be inappropriate and unnecessary. Consequently an intimation to the municipality that it should henceforth carry out the repairs of these roads as they vest in it under the Act would be sufficient.

Sd/-P.N.M. 6/5
Remembrancer of Legal Affairs.

U.O. to the P.W.D., No. 4133 dated the 7th May 1941.

B.K.S. 16/5/ 4c.

Sub-section (4) of section 4 of the Bombay Municipal Boroughs Act, 1925 provides that save where it is otherwise provided in this Act, when a Municipality ceases to exist on account of its members ceasing to hold office, or for any other reason whatsoever, the property and rights vested in the Municipality shall, subject to all charges and liabilities affecting the same, vest in His Majesty, and the proceeds thereof, if any, shall be expended under the orders of the Provincial Government for the benefit of the local area in which such Municipality had jurisdiction. The provisions of this section do not, in my opinion, apply to the facts of the present case. It would appear from the letter of the Chief Officer that Mr. Taraporevala, President of the Thana Municipality tendered his resignation as President on 8th May, and the Municipal Board by a resolution accepted his resignation the same afternoon adding, however, that it should take effect from 12 noon of 9th May. It also appears that all the councillors gave notices of resignation to Mr. Taraporevala at 9.15 P.M. on 8th May. On these facts, it cannot be held that all the members of the Municipality have in law, vacated their offices for when they submitted their resignations there was no President in office Section 20 of the Act provides that the President may resign his office by tendering his resignation in writing to the Municipality and such resignation shall take effect on its acceptance by the Municipality. Under section 26 any councillor, and under section 20 the Vice-President, may resign his office by giving notice to the President. It is thus clear from the provisions of section 20 that Mr. Taraporevala s resignation became effective the moment the Municipality accepted it. Consequently, the action of the Board in resolving that the resignation should take effect from noon of the following day was ultra

vires and Mr. Taraporevala must be regarded as having ceased to hold the office of President on 8th May when the Municipality recorded the resolution accepting his resignation. Thus at 9.15 P.M. on 8th May, when Mr. Taraporevala puported to receive the notice of resignation from the councillors he had already ceased to be President. Consequently the councillors cannot be deemed to have effectively resigned by delivering their notice to him and they cannot also be deemed to have ceased to hold office within the meaning of section 4 (4).

2. However, since the members as a body have notified in writing that they have resigned and have in fact withdrawn from their duties as councillors, it xx may be legitimately concluded that a deadlock has been created by their extra-ordinary conduct in deliberately bringing the Municipal administration to a standstill. It would consequently be competent for Government to take action under section 219(1) of the Act. That section provides that if in the opinion of the Provincial Government a Municipality is not competent to perform, or persistently makes default in the performance of the duties imposed on it by or under this Act, or otherwise by law, exceeds or abuses its powers, the Provincial Government may, after giving the Municipality an opportunity to render an explanation, by an order published, with the reasons therefor, in the Official Gazette declare the Municipality to be incompetent or in default, or to have exceeded or abused its powers, as the case may be, and may dx dissolve such Municipality or supersede it for a period to be specified in the order. (See R.L.A's U.R. to L.D. No.274- Confl., dated the 8th November 1940).

Sd/-P.N.M. 10/5
Remembrancer of Legal Affairs.

U.R. to G.D. No. 4309 , dated the 10th May 1941.

.S. 16/5/ 40.

Office of the R.L.A.

The R.L.A. is requested to reconsider his opinion dated 10th May 1941 and if necessary to consult the Advocate General or a special Counsel in the absence of the Advocate General from Bombay. The question raised for reconsideration are:

(1) whether the resignation of the members of the Thana Municipality is valid, and

(2) whether the action taken by the Collector under section 4(4) is valid.

Question No.1.- For reasons already stated in para.1 of his opinion dated 10th May 1941, the R.L.A. still adheres to the view that the resignation of the Councillors is not strictly valid.

Question No.2.- Sub-section (4) of section 4 of the Bombay Municipal Boroughs Act, 1925 enacts that save where it is otherwise provided in this Act, when a Municipality ceases to exist oneccount of its members ceasing to hold office, or for anyother reason whatsoever, the property and rights vested in the Municipality shall, subject to all charges ~~and~~ and liabilities affecting the same, vest in His Majesty, and the proceeds thereof, if any, shall be expended under the orders of the Provincial Government for the benefit of the local area in which such Municipality had jurisdiction. A Municipality is a corporate body and has perpetual succession. It never ceases to exist, except when the Municipal District for which it is constituted ceased to be a Municipal District. Even when a Municipality is dissolved or superseded it does not cease to exist. In an dissolution

the new body of Councillors takes office immediately the old body has to vacate, and supersession means only a suspension, not cessation of the corporate body. A Borough Municipality ceases to exist only when its Municipal District is abolished under section 4, and provision is there made for the property and rights vesting in His Majesty." (See note on section 4(4) of the Bombay Municipal Boroughs Act and the Bombay Municipal Boroughs Manual by Cummings, page 7). "Where a Corporation is unable by reason of the reduction of the number of its members to do what is necessary for the continuance of its existence, or for carrying out the objects for which it was created, it will not be thereby extinguished or dissolved, but only suspended." (See para.194 of Halsbury's Laws of England, 2nd Edn. Vol. VII page 121). Sub-section (4) must be read in its context, that is, with the rest of the section. If it is so read, the words "when a Municipality ceases to exist on account of its members ceasing to hold office" can only be interpreted to mean when it ceases to exist on account of the territorial changes effected by the Legislature, that is to say, when the Municipal District is abolished and the members of the Municipality thereby cease to hold office. In the present case, assuming that the resignation of the Councillors is valid, the Thana Municipality cannot be deemed to have ceased to exist by reason of such resignation.

B.R.S. 16/5/ 4c.

It will make no difference if one member resigns or all members resign before the expiry of their term of office. The vacancies caused by such resignations would be regarded as casual vacancies and under section 29 of the Act such casual vacancies would have to be filled up as soon as possible by a by-election or nomination, as the case may be. In the present case, the resignation of the Councillors en bloc has undoubtedly brought about a situation where the Municipality can be said to have temporarily ceased to function, but not ceased to exist. Consequently sub-section (4) of section 4 can have no application and the Collector's order under that sub-section vesting the Municipal property in His Majesty and appointing his Personal Assistant to be in charge of the Municipal property cannot, therefore, be held to be valid.

2. In view, however, of the importance of the matter, it would be advisable to secure the legal opinion of Sir Jamsetjee Kanga in the absence of the Advocate General.

Sd/- P.B.B. 15/5
Remembrancer of Legal Affairs.

B.B.S. 16/5/ 40.

URGENT

CONFIDENTIAL

Central Bank Building,
Esplanade Road.

No M/3836/41

Bombay 16th May, 1941

From

Messrs, Little & Co.,
Solicitors.

To

The Secretary,
Legal Department,
Government of Bombay,
Bombay.

Sir,

Re. Thana Municipality.

We send herewith the original of Sir Jamshedji Kanga's Opinion which we have just received.

We have the honour to be,
Sir,
Your most obedient servants,
Little Co.

B.R.S. 16/5/ 4c.

I agree with the opinion of the Remembrancer of Legal Affairs. In my opinion Section 4(4) of the Bombay Municipal Burrough Act 1925 does not apply to this case.

Two questions arise in this case.

(1) Whether the acceptance of the resignation of the President is a proper acceptance or whether the same is ultra vires and whether the Counsellors themselves have effectively resigned by delivering their notices to the President.

(2) Whether even if the resignation of the President and the Counsellors is valid, the case falls under Section 4(4). It is provided by Sec. 20 of the Act that a President may resign his office by tendering his resignation in writing to the Municipality and such resignation shall take effect on its acceptance by the Municipality. In the present case the President tendered his resignation as President on 8th May and the Municipal Board by a Resolution accepted his resignation, adding that it would take effect from noon of 9th May. All the Counsellors gave notices of resignation to the President at 9-15 p.m. on 8th May. It is provided by Section 26 that any Councillor may resign his office by giving notice in writing to that effect to the President. If the Presidents resignation is deemed to have been accepted not from noon of 9th May but from the date of the Resolution of the Board there was no President to whom the resignation of

the Counsellors could be tendered under Section 26. I think the resignation should be taken to have been accepted on the 8th May If the Presidents resignation however did not take effect from the time the Resolution was passed by the Board but took effect from noon of 9th May, the President could accept the resignation of the Councillors though the resignation of all the Counsellors included the resignation of the President also as a mx member of the Municipality. If the President was still functioning all the Councillors including the President as a member resigned on 8th May and the acceptance of the resignation as from noon of 9th May would be of no effect. It appears, to me that the action of the Board in resolving that the resignation should take effect from noon of the following day was void and the President ceased to hold office of the President on 8th May when the Municipality recorded the resolution accepting his resignation. Then Mr. Taraporewalla at 9-15 on 8th May received the notice of the resignations from the Councillors I think / he had ceased to act as President. If the Councillors therefore could not be deemed to have effectively resigned by delivering their notices to the President no question of the applicability of the Section 4(4) would arise.

B.E.C. 16/5/ 4c.

Even if the view taken in respect of the resignation of the President and the Councillors is not correct and even if the President and the Councillors ~~have~~ have properly resigned it cannot be said that the Municipality has ceased to exist under Section 4(4). It is provided by section 4(4) that where a Municipality ceases to exist on account of its members ceasing to hold office or for any other reason whatsoever the property and rights vested in the Municipality shall vest in His Majesty and the proceeds thereof, if any, shall be expended under the orders of Government for the benefit of the Local area in which such Municipality had jurisdiction. This Section contemplates the non-existence of a Municipality and not merely the resignation of all the members of the Municipality. The Municipality is a corporate body and has perpetual succession. See Section 8 and it would not cease to exist except when the District for which it is constituted ceases to be a Municipal District. Even when the Municipality is dissolved under Sec. 219(1) it does not cease to exist See Section 219(3) where it is provided that on the issue of the order of dissolution under Section 219(1) election of Councillors shall be held under the provisions of the Act. A Borrough Municipality ceases to exist when the Municipal District is abolished or the Municipality itself which is a corporate body is extinguished. Where however members of the Corporation resign it cannot be said that the Corporation is thereby extinguished. In my opinion the words "Municipality ceases to exist on account of its members ceasing to hold office" mean that the Municipality itself as a corporate body ceases to exist by the abolition of the Municipality or by the abolition of the Municipal District or by changes in the law. Assuming therefore that the view taken on the 1st point is incorrect and that the

resignations of the Councillors is valid, the Thana Municipality cannot be deemed to have ceased to exist by reason of the resignations in the present case. Has pointed by M.L.A., the resignation of the Councillors en block has brought about a situation where the Municipality can be said to have temporarily ceased to function but not ceased to exist The said Section 4(4) does not apply to this case, the only Section under which action could be taken is in my opinion Section 219.

Sd/-J.B.K.
16/5/41.

B.K.J. 16/5/ 4o.

Office of the R.L.A.

R.L.A's opinion dated the 15th May 1940 together with a copy of Sir Jamshedji Kanga's opinion dated the 16th May 1941 are forwarded herewith.

Sd/- P.N.U.

R.L.A.

U.R. to G.D.No.4505, dt. 16-5-1941.

B.K.S. 16/5/ 4c.

It appears from paragraph 6(a) of Mr. Starte's letter embodied in G.R., J.D. No. 1394, dated the 5th March 1917 that the buildings, drains, roads etc. of the Settlement were to remain in the possession of Government as hitherto and that only the whole block of buildings was to be allotted to the American Marathi Mission to be used by them for Settlement purposes. On the question of possession therefore the opinion of the District Government Pleader, Sholapur, seems to be based on incorrect facts for it assumes that the possession was with the American Mission and not with Government (see p. 25, paragraph 2 of the loose papers). It is not clear whether Government or the Mission authorities were paying the municipal taxes, if any, including the privy tax now being demanded, during the period from 1917 to 1938 while the American Marathi Mission was managing the Settlement. Since the validity of the notice of demand will depend upon whether the original bill was served on the Settlement Officer or other person, it may be ascertained

(1) who paid the tax

(a) previous to 1917,

(b) from 1917-1918, and

(c) after 1938;

(2) in whose name the bills were made out;

(3) whether house No. 216 in respect of which the notice of demand has been issued comprises the entire block of buildings in the Settlement or only a portion of it.

2. It is not known whether the liability for the tax now demanded in respect of the year 1930-31 has been duly verified and whether it has been ascertained that these dues were not duly paid in the ordinary course, as apparently they have been paid in respect

of all the other years before and after 1930-31. If the tax for 1930-31 has not in fact been paid it would be desirable to ascertain the reason for such non-payment. These are, however, questions of fact to be investigated by or in consultation with the Assistant Backward Class Officer in charge of the Sholapur Settlement. The correspondence of which copies are to be found at pages 15 and 17 of the loose papers does not throw sufficient light on all the relevant facts material to this case.

3. In view of the provisions of section 104(1) requiring the Chief Officer to cause bills to be presented "with the least practicable delay" and the fact that in this case there seems to subsist an apparently unexplained delay of nearly seven years in presenting the notice of demand dated 18th January 1938, it should be ascertained whether the relevant bill containing the particulars specified in section 104(2) was or was not duly caused to be presented in this particular case, and if presented who was the person then treated as liable for the payment under section 104(1). If possible the original bill served or a copy of the counterfoil from the municipal records may be obtained and furnished with these papers. From the Chief Officer's letter dated 12th August 1940 (p. 17 of the loose papers) it appears that the house property taxed viz. house No. 216 in Pachapeth is in charge of the Police Department since 1932 and <u>that</u> department is paying the taxes. This is denied bythe Assistant Backward Class Officer in paragraph 3 of his endorsement dated 15th August 1940 (at pp-12-13 of the loose papers) although paragraph 5 of that endorsement suggests that Mr. Hieb the then manager

concedes that the buildings were handed over to the Police Department. What exactly is the correct position on this point may please be made clear. Unless all the relevant facts are clearly stated, it is impossible to give any useful advice on the legal aspect of the case, and these papers may accordingly be returned to the Home Department for favour of a concise statement of the relevant facts and the question of law on which the Remembrancer of Legal Affairs opinion is sought. (See Rule 8 of the Law Officers Rules and Secretariat Instruction 104).

4. The papers accompanying endorsement by the Backward Class Officer, Province of Bombay, No.Acct.12, dated the 27th December 1940 are herewith returned.

Sd/-V.N.J. 1.2.41.
Remembrancer of Legal Affairs.

U.R, to H.D., No. 995 dated the 3rd February 1941.

B.K.S. 16/5/ 4c.

The Sholapur Municipality demands by its notice (at page 23 of the file) dated 18th January 1930 read with its Bill at page 17 ante dated 17th March 1930 an amount of Rs.323-8-0 plus notice fee on account of house tax and water rate due for the year 1930-31 in respect of House No.216 which is part of the buildings of the Criminal Tribes Settlement, Sholapur. The settlement buildings in the year in question were in the possession of Government, though the American Marathi Mission used them as licensees and agents appointed by Government to manage the Settlement subject to the general supervision of the Criminal Tribes Settlement Officer. (See para 6 and 7 of Mr. Starte's letter underlying Government Resolution, Judicial Department No.1394 dated 5-3-1917). The primary liability for the municipal taxes under section 85 of the Bombay Municipal Boroughs Act, 1925 was thus of Government and the Municipality's Chief Officer was bound, with the least practicable delay, to cause to be presented to the Government Officer concerned a bill for the taxes under section 104(1) of the Act. The Government Officer concerned in this case was the Criminal Tribes Settlement Officer. It appears from the bill at page 17 ante that the Chief Officer did prepare the bill inthe name of the Settlement Officer. It further appears from para.2(2) and 2(1)(b) of the letter of the Backward Class Officer at pages 11 and 12 ante that such bills upto 1930 were presented to the Settlement Manager who was the agent of the American Mission, and who paid the bills from the Mission funds. As regards the bill at page 17 ante, presumably it was also similarly presented to the Settlement Manager, seeing that this bill covered two other items of taxes which were fully paid up by the Settlement Manager (see para.3 of the

aforesaid letter of the Backward Class Officer)

However, it further appears from the letter of the Criminal Tribes Settlement Officer at page 19 ante and the concluding part of para.3 at page 13 ante that the bill in this case was brought to the notice of the Settlement Officer by the Settlement Manager in 1931, and the former advised non-payment; and that the Settlement Officer under his general supervision all along accepted presentation of such bills to the Settlement Manager as due presentation to Government's agent for the purpose. Government will be estopped from denying this position. The Municipality having thus complied with section 104 (1) of the Act, it will be entitled to present the notice of demand now under section 104(3), and although a suit will be barred under Art.120 of the Limitation Act, a warrant under section 105 will be competent. It is not desirable in this case to contest the validity of the notice of demand and consequently of the warrant if any on the ground that the notice is issued in 1938 though the bill was presented in 1930. Although the general rule is that where no time is specified, reasonable time is implied, the position does not apply to interpreting a statute which remains silent on the point. Where an Act authorised the apportionment of the cost of a sewer, without limiting any time for the purpose, the Court refused to read the Act as limiting the exercise of the power to a reasonable time. See Bradley v. Greenwich Board of Works (1878) 47 L.J. M.C. 111, quoted at page 14 of Maxwell's Interpretation of Statutes, Eighth Edition. It seems therefore advisable to direct the Backward Class Officer to settle the claim amicably.

Sd/-P.N.M. 13/5
Remembrancer of Legal Affairs.

U.R. to H.D., No. 4414, dated the 14th May 1941.

B.R.v. 16/5/ 40.

H.L.A's Office.

The subsoil in this case continues to vest in Government and it would not be competent for the Municipality to lease the land to the Parai Panchayat for the purpose of laying a drain pipe (H.L.A's opinion No.8717, dated the 4th October 1940). Government can grant such permission, as the subsoil belongs to it. But in order that the grantee x may exercise his rights and perform his obligations under the grant, it may be necessary for the grantee to make excavations for repairs to or construction of the drains, and this will affect the surface rights of the Municipality as regards the street. It was therefore suggested in H .L.A.'s opinion No. 2140, dated the 8th May 1935 that in such cases from the point of administrative convenience there should be a tripartite agreement to which the Municipality should be a party. The proper course is to provide by suitable additional clauses in the agreement that the Municipality should receive a part of the consideration for agreeing to permit the grantee to disturb its surface rights in the street as may be reasonably necessary for the purpose of constructing and maintaining the drain pipe.

Sd/-P.N.M. 27/5
Remembrancer of Legal Affairs.

Sd/-E.P.B. 26/5

U.R. to R.O., No. 4864, dated 27-5-1941.

B.K.S. 16/5/ 4c.

Office of the R.L.A.

It does not appear that in this case the Ahmednagar Municipal Borough has either denied its legal liability to pay the additional charges now sought to be recovered or even refused to pay the same. The copy of the resolution at page 5 ante and the letter from the President at page 3 ante show that Government has been approached with only a request to waive recovery of the charges in question. Prima facie Government's claim for arrears will not, in law, be barred by limitation as the period will be sixty years under article 149 of the First Schedule to the Indian Limitation Act, 1908. See also the Queen v. Blenkinsop 1892, 1 Q.B.43. If the Municipality denies its legal liability, the papers may be again referred to the Remembrancer of Legal Affairs for considering the validity of the grounds relied upon by the Municipality.

Sd/-P.N.M.
Remembrancer of Legal Affairs.

U.R. to G.D.,No. 1862, dated the 3rd March 1941.

R.L.A. 16/5/ 40.

Office of the R.L.A.

The Ahmedabad Borough Municipality has constructed a recreation centre on land belonging to itself and proposes to hand it over to the Labour Welfare Department of Government on certain terms and conditions stated in its letter at page 1 ante. The question for consideration is whether it is necessary that the transaction should be evidenced by a formal agreement. Section 48(1) of the Bombay Municipal Boroughs Act empowers a Municipality to lease, sell or otherwise transfer any moveable or immoveable property which may, for the purpose of this Act, have become vested in or acquired by it, and to enter into and perform all contracts in that behalf. In the present case the Municipality does not propose to divest itself of the ownership of the property but merely to transfer the property to Government for an indeterminate period so that it could be used by Government for the purposes and under conditions specified. The transaction would more appropriately be in the nature of a license withinthe meaning of sections 52 and 53 of the Easements Act, 1882; and for such agreement of transfer the previous sanction of the Commissioner and the sanction of the Municipality by a resolution passed at a general meeting would be necessary under sub-sections (2) and (3) of section 48. Sub-section (4) of that section and section 49 provide for the execution of contracts on behalf of the Municipality and also the mode of executing them; and it is also provided that no contract shall be binding on a municipality unless the requirements of sections 48 and 49 have been complied with. The provisions of these sections are mandatory and it would be necessary to obtain a formal transfer from the Municipality after the procedure indicated in section 48, sub-sections (2) and (3) has been followed. The transfer should be executed on behalf of the Municipality, in compliance with section 48(3) and section 49 of the Bombay Municipal Boroughs Act, 1925, and on behalf of

Government in accordance with section 175(3) of the Government of India Act, 1935.

Sd/-P.N.M. 21/5
Remembrancer of Legal Affairs.

U.R. to P. & S.D. No. 4661 dated the 22nd May 1941.

B.K.G. 16/5/ 40.

The question raised for consideration is whether fees for licenses to construct projections over land statutorily vesting in Municipalities can be levied by the Municipalities or by Government. Section 50(2) of the Bombay District Municipal Act, 1901 and section 63(2) of the Bombay Municipal Boroughs Act, 1925, vest certain kinds of property in the Municipalities, which they must apply as trustees and in accordance with the provisions of the Act. The effect of such vesting was considered by the Madras High Court in Sundaram Ayyar vs. The Municipal Council of Kumbhakonam, I.L.R. 25 Mad. 635, and it was held that such vesting for purposes of a street does not transfer to the Municipal authority the rights of the owner inthe soil over which the street exists. The Municipality does not own the soil from the centre of the earth usque caelum, but it has the exclusive right to manage and control the surface and so much of the soil below and the space above the surface as is necessary to enable it to adequately maintain the street as a street. The original owner of the property, therefore, continues to be entitled to the property subject to the rights of the Municipality. Consequently, where land belonging to Government has vested in a Municipality under the provisions abovesaid, the sub-soil of the land and the space above the surface, to the extent not necessary for the purpose for which the land vested in the Municipality would still belong to Government. (See R.L.A's opinion No. 8541, dated the 2nd October 1940). The result is that where a projection is so located in the space above the surface of municipal land or street as to affect the Municipality's interest in the land or street, it will be for the Municipality to levy the fee under the provisions of section 70 of the Bombay District Municipal Act, 1901, or section 90 of the Bombay Municipal Boroughs Act, 1925. If however the projection is so placed in the space above as not to

affect the Municipality's interest in the land or street, the right to levy the fee will vest in Government.

2. In his opinion No. 10122, dated 15th November 1940, the H.L.A. held that as the projection encroached on land vested in Government, Government was entitled to levy the rent. In his opinion No. 8641, dated 2nd January 1940, the H.L.A. held that as the road surface which would be disturbed vested in the Municipality, the Municipality was competent to levy a nominal fee. These opinions are therefore not inconsistent with each other, but distinguishable on facts and correct.

Sd/-P.H.M. 27/5
Remembrancer of Legal Affairs.

U.H. to G.D., No. 4890, dated the 28th May 1941.
B.K.S. 16/5/ 4c.

Office of the R.L.A.

Rule 13(1) of the Election Rules of the Municipality of Broach inter alia provides that the nomination papers shall be in the Form B appended to these rules. The clause relating to the denomination of candidate in the Form B runs thus: "State whether Muhammadan or non-Muhammadan. In case of a ward in which a seat is reserved for Harijans, Indian Christians, Backward Tribes, Anglo-Indians, or ~~ex~~ Europeans, also state whether - belonging to the community or communities for which seat or seats are reserved. If Harijan or member of a Backward Tribe, state the caste." The question for consideration of the R.L.A. is whether the order of the Collector rejecting the nominations of candidates for election to the Broach Municipality from a non-Muhammadan Constituency with reserved seats for failure to state in the nomination papers whether or not they belonged to the community or communities for which the seat or seats were reserve as provided in the said Rule 13(1) is correct.

2. The Collector of Broach and Panch Mahals has interpreted the underlined provision to mean that a candidate should state whether or not he belongs to be community or communities for which a seat or seats are reserved, while the District Judge has held that a candidate need not reply to this question unless he happens to belong to such community or communities. Both interpretations are possible but I think the view taken by the Collector is the sounder and more logical. A perusal of rules 14, 15 and 15A of the Election Rules clearly shows that it is necessary for the Returning Officer to ascertain the number of candidates, if any, qualified to fill the reserved seat or seats and it is for this purpose that the clause relating to the denomination of candidate in the Form B of the nomination paper has been inserted. The obvious intention of inserting the words - "also state whether - belonging to the community or communities for which seat or seats

are reserved" is to require the candidate to state whether or not he belongs to the community or communities for which seat or seats are reserved. Even if the word "whether" is interpreted as held by the District Judge to mean "if" I do not think it would make any difference, for even then the intention of the clause would be the same. However, to dispel all doubts on the point it would be desirable to amend the denomination clause in Form B by adding the words "or not " after the word "whether" where it occurs for the second time.

Sd/-P.N.M. 21/6
Remembrancer of Legal Affairs.

U. O. to C.D., No. 5549, dated the 23rd June 1941.

S.E.S. 16/5 40.

Office of the R.L.A.

The question for consideration of the R.L.A. is whether under section 34(2)(a) of the Bombay Municipal Boroughs Act, 1925, read with rule 2 of the Rules framed by the Sholapur Municipality under clauses (f) and (g) of section 58(1) it is competent for the Chief Officer to fine, suspend, reduce, etc. municipal servants in receipt of salary exceeding Rs.30 but not Rs. 50 per month.

2. Section 34(2)(a) of the Bombay Municipal Boroughs Act, 1925, provides that the Chief Officer may subject to the provisions of sub-section (4) fine, reduce, suspend or dismiss any municipal servant whose salary does not exceed Rs. 30 and subject further to the provisions of the rules for the time being in force any other municipal servant, not being the health officer, engineer or auditor of the Municipality. All municipal servants other than the health officer, engineer and auditor whose salary exceeds Rs.30 but does not exceed Rs. 50 per month will fall in the latter part of this provision and the Chief Officer may, if empowered in this behalf by the provisions of the rules for the time being in force, fine, reduce, suspend or dismiss them.

3. By rule 1(b) of the rules framed by the Sholapur Municipality the power of the President to fine, reduce, suspend or dismiss municipal servants who are under the control of the Chief Officer under section 34(1)(c) is excluded. By rule 2 the Chief Officer ~~under~~ is given power to appoint, fine, reduce, suspend, discharge, dismiss or otherwise punish any stipendiary officer or servant of the Municipality other than those mentioned in rule 1 above, subject to section 34(2). Section 34(1)(c) relates to the appointment to posts the monthly salary for which does not exceed Rs. 50, and to any other posts the appointment to which is not otherwise provided for. It follows therefore that the municipal servants falling under section 34(1)(c) being excluded ~~from~~ from the

provisions ofrule 1(b) are included within the scope of rule 2. Consequently the Chief Officer of the Sholapur Municipality has the power to fine, reduce, suspend or dismiss municipal servants, other than the health officer, engineer or auditor of the Municipality, whose salary does not exceed Rs. 50 per month. The view taken by the pleader for the Municipality in his letter at page 13 ante is correct.

4. As usual a fee of Rs.80/ may be charged to the Municipality for the opinion.

Sd/-P.N.M. 26/6
Remembrancer of Legal Affairs.

U.R. to G.D., No. 5735 , dated the 30th June 1941.

B.K.S. 17/5/ 4c.

No. S.227/11058-A,
General Department,
Bombay Castle, 7th July 1941.

Copy, with copies of the letter to which it is a reply and its accompaniments, together with a copy of the Remembrancer of Legal Affairs' opinion No.5735, dated the 30th June 1941, forwarded to the Commissioner, Central Division, for information.

By order of the Governor of Bombay,
Sd/- E.P.Patell,

Junior Assistant Secretary to the Government of Bombay, General Department.

No. S.227/11058-A,
General Department,
Bombay Castle, 7th July 1941.

Copy forwarded to the Legal Department for information

Sd/-E.P.Patell.
Junior Assistant Secretary to the Government of Bombay, General Department,

Submitted for information
file with R.L.A's No. 5735 dt. 30-6-41.

Id/-
10/7
A.S. Sd/-R.T.K. 19/7

B.K.S. 17/5/ 4c.

Submitted.

The President, Godhra Borough Municipality states that under the House Tax Rules of the Municipality big land holders give small plots of surveyed numbers on annual rent of less than Rs.5/- for erecting huts. As the owners of the lands derive an annual rent of less than Rs.5/- per each plot leased, they are exempt from payment of the house-tax under the House-tax Rules. He states that as in all such cases the owners of the superstructures are tenants they are separately assessed for the superstructure while the owners are assessed for the land underneath. As suggested by the Examiner, L.F.A., the Municipality proposes to insert a rule on the following lines, taking power to the Municipality to levy the tax collectively on the plots forming part of the same compound and belonging to the same owner:-

"When the pieces of land belonging to the same owner and forming part of one compound are leased to different tenants and when the tax of the superstructure and of the land is separately assessed, the tax on the land will be collectively assessed on the rent derived by the owner."

2. The question for the R.L.A's consideration is whether there is any objection to the proposed rule being sanctioned.

3. Section 73(v) of the Bombay Municipal Boroughs Act, 1925, provides that subject

to any general or special orders which the Provincial Govt. may make in this behalf and to ... provisions of sections 75 and 76, a Municipality may impose a rate on buildings or lands or both situated within the Municipal borough. Section 75 provides for the preliminary procedure to be followed by the Municipality before imposing a tax. Section 76, provides for the power of the Provincial Govt. to sanction rules with or without modifications.

4. The house-tax rules framed by the Godhra Municipality are contained in Schedule B to the rules (vide rule 152). Rule 1 of the Rules in Schedule B provides that the rate of house-tax as sanctioned by and shown in the accompanying schedule will be levied on all houses, buildings and lands within the Municipal limits from which the income, as shown in the accompanying Schedule is derived or the value of which amounts to or exceeds the amount shown against each rate in the Schedule. Rule 4 provides that the rates shall be payable by the owners or their agents and in the absence of the owners or agents by the occupiers thereof for an entire year in advance on the first quarter of every year commencing from 1st of April. Rule 6 provides that all out-houses within the same compound shall be considered as part of the house in assessing the tax and not assessed separately. Rule 7, however provides that when the owner of the superstructure is alleged to be other than the owner of the land on which it stands,

the owner of the superstructure shall be primarily liable to the Municipality for the tax and in default of payment by him the tax shall levied form the owner of the land. Since this rule makes the owner of the superstructure primarily liable for the payment of the house-tax, it impliedly conveys that there should not be separate assessment on the land and on superstructure but that the tax should be based on the estimated annual rent or letting value of the superstructure and the land below it. In view of this interpretation, the practice of assessing the land and the superstructure separately on the owners of the land and the superstructure appears to be illegal and ultra vires rule 7. The proposed new rule is intended to apply to pieces of land belonging to the same owner and situated in one and the same compound but "the tax of the superstructure and of the land is separately assessed" In so far as this rule provides for assessment of tax separately on the superstructure and the land, it appears to be inconsistent with rule 7. If if is intended that in case of lease of lands the superstructure and the land below it should be assessed separately for the levy of the tax, it is necessary to amend rule 7. The proposed rule 6A appears to be opposed to and inconsistent with the existing rule 7. The Commissioner's view appears to be correct.

Sd/-S.P.B. 12/7

S.L.A. Reply as in AD's note U.R.to G.D.No.6707,d.30.7.1941
Sd/- B.M. 28/7

794/41.

Office of the R.L.A.

It appears that Mr. Valvekar was elected President of the Poona City Municipality on 25th July 1941 for a period of one year. The question for consideration of the R.L.A. is who should call the meeting for the election of a new President.

2. The proviso to section 19(1) of the Bombay Municipal Boroughs Act, 1925, provides that the term of office of such President or Vice-President (i.e. President or Vice-President appointed for such term not less than one year and not exceeding three years) shall be deemed to extend to and expire with the date on which his successor is elected. Though the period of one year for which Mr. Valvekar was elected President of the Poona City Municipality has expired his term of office will, by virtue of the proviso to section 19(1), extend to and expire with the date on which his successor will be elected. Mr. Valvekar therefore still continues in office as President and consequently it would be competent for Mr. Valvekar to call a meeting under section 35 for the election of his successor. Section 19A and section 23(1) have no application to the present case. The view taken by the Commissioner at page 5 ante is correct.

Sd/-P.H.H. 19/8
Remembrancer of Legal Affairs.

U.R. to G.D., No. 7327 , dated the 20th August 1941.

B.K.S. 17/5/ 4c.

6502/41

Submitted.

In his opinion No.4864 dated 27-5-41, the R.L.A. advised that as for the purpose of ~~in~~ laying drain pipe, it will be necessary for the grantee to make excavations for the construction of, or repairs to, the drains, and this will affect the surface rights of the Municipality in whom the public street vests, it is desirable to provide in the tripartite agreement that the Municipality shall receive a part of the consideration for agreeing to permit the grantee to disturb its surface rights in the street for constructing and maintaining the drain-pipe. In pursuance of this opinion, the H.D. now requests the R.L.A. to insert a clause on the above lines providing for payment of 25 per cent of the rent charged by Govt. The R.L.A. is requested to state whether the additional clause is in order.

D.K.D. 17/5/ 40.

6502/41.

Submitted.

In his opinion No.4864 dated 27-5-41, the R.L.A. advised that as for the purpose of ~~in~~ laying drain pipe, it will be necessary for the grantee to make excavations for the construction of, or repairs to, the drains, and this will affect the surface rights of the Municipality in whom the public street vests, it is desirable to provide in the tripartite agreement that the Municipality shall receive a part of the consideration for agreeing to permit the grantee to disturb its surface rights in the street for constructing and maintaining the drain-pipe. In pursuance of this opinion, the H.D. now requests the R.L.A. to insert a clause on the above lines providing for payment of 25 per cent of the rent charged by Govt. The R.L.A. is requested to state whether the additional clause is in order.

D.K.G. 17/5/ 4c.

Office of the R.I.A.

Seen and returned.

Sd/-P.N.H. 1/8
Remembrancer of Legal Affairs.

Sd/-H.V.A. 1.8.41

U.R. to R.D. No. 6838, dated 4-8-1941.

D.J. (before issue). Id/- 1/8

A.L.R. (After issue).

S.A.D. (before issue). Id/- 2/8

A.J. (After issue).

Submitted after issue File in O Boroughs/41.

Sd/-P.P.S.
5/8

A.D. Sd/-R.I.K. 5/8

R.L.A. Reply as suggested by A.L.R.

Sd/-P.N.H. 8/8

B.K.J. 17/5/ 4c.

Office of the R.L.A.

In the draft clause, after the word 'constructing', the words 'and maintaining' should be inserted The Clause would then appear to be in order.

Sd/-P.N.H.

R.L.A.

U.O. to R.D.No. 7072. dt. 11-8-1941

Office of the R.L.A.

Ice is used in a variety of ways as a chilling agent. It is commonly used for cooling liquids. When put in aerated waters or other drinks, it melts into water and is consumed as part of the drink. When it is mixed with food and melts, its water often gets absorbed in the food. Consequently it can be deemed an article or thing intended for human food or drink within the meaning of section 61(1)(b)(ii) of the Bombay Municipal Boroughs Act, 1925. The view taken by D.S.(G.D.) at page 60 ante appears to be correct.

Sd/-P.N.N. 11/8
Remembrancer of Legal Affairs.

Id/-
9/8

U.R. to G.D.No. 7160 dated the 13th August 1941.

D.S. (before issue)	Id/-	11/8
A.L.R. (" ")	Id/-	13/8
D.A.G. (" ")	Id/-	12/8
A.G. (" ")	Sd/-H.T.K.	13/8

D.K.S. 17/5/ 40.

Office of the E.L.A.

Answers to the questions referred to the E.L.A. are as follows:-

Questions I and II at pages 19-21 ante.- Section 200(1) of the Bombay Municipal Boroughs Act, 1925, provides that the standing committee and, subject to the provisions of sub-section (3), the Chief Officer may direct any prosecution for any public nuisance whatever and may order proceedings to be taken for the recovery of any penalties and for the punishment of persons offending against the provisions of this Act or of any rule or by-law thereunder and may order the expenses of such prosecutions or other proceedings to be paid out of the Municipal fund. Since the complaint filed in the present case related to offences under sections 123 and 193 of the Bombay Municipal Boroughs Act, 1925 and by-law No. 44 of the By-laws made by the Kurla Municipality, no previous approval of the Standing Committee under section 200(3) was necessary and consequently the approval of the Administrator obtained by the Chief Officer was an administrative measure and not in compliance with any statutory provision. The complaint in this case is expressed to have been filed under the direction and authority of the Chief Officer in exercise of the statutory powers vested in him under section 200(1) and not at the instance of the Administrator. See paragraph 6 of the complaint and the annexed authority at page 85 of File No. I. It was therefore competent for the Chief Officer to withdraw it with the permission of the Magistrate under section 248, Criminal Procedure Code and it was not legally necessary for the purpose to obtain either the direction or sanction of the Municipality

B.K.C. 17/5/ 4c.

ur of the Standing Committee. The action of the Chief Officer in respect of the Criminal case is therefore legal.

2. Question III at page 21 ante. - It is true that the power to sue, compromise and pay compensation vests in the Municipality under section of the Act and the Chief Officer had under the Act no power to compromise the suit # filed by M.A. Ansari and another. It would appear however that the suit was not compromised but withdrawn by the plaintiffs under Order 23 of the Civil Procedure Code, which the plaintiffs were fully competent to do. It was open to the Municipality to press for its full costs in the suit, but the Chief Officer cannot be held responsible for withdrawal of the suit.

3. Question IV at page 21 ante In view of the answers above, this question does not survive.

4. As usual the Municipality may be charged a fee of Rs. 20/- for the opinion.

Sd/- P.N.D. 30/9
Remembrancer of Legal Affairs.

U.D. to O.D., No. 7718, dated the 1-9-1941.

D.K... 17/9/ 40.

Office of the H.L.A.

There is no substance in the contention of the Municipality. The words "previous to his admission" in the first proviso to section 70 of the Bombay Municipal Boroughs Act, 1925, means previous to his first admission to the leper Asylum. Section 70 provides for a statutory liability of the Municipality to ~~pay~~ pay the maintenance charges of a pauper leper. If such a leper after admission escapes from the Asylum the Municipality's liability to pay his maintenance charges is suspended until he is re-arrested under section 12 ofthe Lepers Act. The fact that Bhula Bhika surrendered himself instead of allowing himself to be arrested would not make any difference in the legal position and he would be detained in continuation of his previous detention. The Surat Municipality is therefore liable to pay the maintenance charges of the leper Bhula Bhika. The view taken by the Collector and the Commissioner is correct.

Sd/-P.N.M. 30/10
Remembrancer of Legal Affairs.

Id/-
30-10-41

U.K. to C.D., No. 9445, dated the 1st November 1941.

B.K.S. 17/5/ 4c.

D.O.

A
The view of the fact that the question included in this case relates to an interpretation of the provisions of the Govt. of India Act, 1935 and is of general importance, no fees should be charged to the Patna Municipality. Only the purport of A.L.A's Opinion should be communicated to the Municipality, vide rule 21 L.O. Rules.

2. Reply as may be as in para 1 of my note.

Sd/- 15/9

A.L.A.

Sd/.-P.M.L. 17/9

U.O. to C.D.No. 8292, dt. 22-9-1941.

S.K.S. 17/5/ 40.

Submitted.

The facts stated by the President Surat Borough Municipality, in his letter No. Encrt 2/4200, dated the 22nd April 1941, are as follows:-

It appears that in the year 1915, one Mr. N.D.Vaidya, owner of S.Nos.4258 and 4260 of Ward No. 2 was served with a notice by the Surat Municipality to remove the steps which formed an encroachment on the public street land. Mr. Denning, the then Municipal Commissioner, however permitted the steps to remain on Mr. Vaidya's executing a "Hadava Kabulayat" During the City Survey Inquiry held in the year 1925, it was held that the steps were an encroachment, but the senior inquiry officer ordered that in view of the "Hadava Kabulayat" a note should be made in the encroachment statement that "steps should be allowed to continue till the house is reconstructed". Thereafter in the year 1931 the Committee of Management proposed to lease the land encroached upon for a period of seven years. The Comm. N.D. however ordered that the encroachment should be removed and Mr. Vaidya was accordingly served with a notice on 1st Dec. 1933 to remove the steps. At this Mr. Vaidya instituted a suit against the Surat Borough Muny for a declaration that the steps in

question were not an encroachment on public street land and that the Muny had no right to remove them. The suit was, however, dismissed with costs on 9th July 1937. Mr. Vaidya then filed an appeal in the Court of the Dist. Judge of Surat against the decision of the Jt. Second Class Sub-Judge, Surat. On 27th July 1938 on the recommendation of the said Committee, the Muny passed a resolution to the effect that if Mr. Vaidya executed a Hadava Kabulayat i.e., an ~~xxxxxx~~ undertaking that he would remove the two steps and clear the ground thereunder when the house would be reconstructed and would not claim any compensation from the Muny for the removal of the same and pay to the Muny its costs in both the Courts, the action proposed to be taken by the Muny for removal of the steps should be dropped. Mr. Vaidya agreed to comply with the conditions mentioned in the resolution of the Muny accordingly a compromise decree was passed.

2. The question for the R.L.A's consideration is what course of action Govt should adopt in order to safeguard the interests of Govt in the subsoil of the street land under the footsteps.

A.I.G.

I agree

seen and returned.

Besides reporting to sections 45 and 136 [illegible]ode as proposed by [illegible] at pp.21-22 ante it appears that in this particular case it may also be legally feasible for Govt. to evict Mr. Hadya and resume the land inasmuch as the action of the Municipality in consenting to the land being held on Kadavu usufruct was an unauthorised alteration in the user of the street land vesting in the Mpty. for application by it as a trustee and cannot affect the rights of the original owner viz. Govt. see sec.63(2) of the L.A.B.Act,1945 and L.A.A's U.O. to [illegible] No.5819 dated 21-11-1938. Since the indefinite period of the Kadavu usufruct may exceed seven years, it appears that for purposes of such a lease, the previous sanction of the Commissioner should also have been obtained in this case. See sec. 48(2) of the Mahaweli Act, 1965.

Sd/-[illegible]
4-11-41

I agree

[illegible] Sd/-[illegible]
6/11

[illegible] to [illegible] No.9676, dt. 10-11-1941.

[illegible] 17/5/ 4c.

On the recommendation of the Panch Borough Municipality supported by its resolution No. 206, dated 29th October 1940, passed by a majority of the Councillors present at the special general meeting called for the purpose of considering the charges against the Chief Officer, Government ordered the Commissioner, Northern Division, to direct the Collector of Panch and Panch Mahals to hold an inquiry into the matter under proviso (b) to section 34 (1) of the Bombay Municipal Boroughs Act, 1925. Before the completion of the inquiry, the Municipality by its resolution No.66, dated 28th July 1941, cancelled its previous resolution No. 206, dated 29th October 1940, and requested Government to drop the inquiry (para 1 ante). On these facts the questions arising for the ...'s consideration are:-

(1) whether the Municipality's resolution No.66, dated 28th July 1941, will have any effect on the orders passed by Government on 11th December for instituting an inquiry against the Chief Officer under proviso (b) to section 34 (1) of the Bombay Municipal Boroughs Act, 1925; and

(2) whether in the event of the charges against the Chief Officer being found to be true in the inquiry that is being held by the Collector of Panch and Panch Mahals, Government can pass an order under section 34 (1) of the Bombay Municipal Boroughs Act, 1925, retaining the continuance in office of the Chief Officer, despite the resolution of the Municipality, No. 66 dated 28th July 1941.

2. Under section 34 (1) of the Bombay Municipal Boroughs Act, 1925, the Provincial Government can exercise its right to veto the continuance in office of the Chief Officer only on

the recommendation of the Municipality and after holding an inquiry. The recommendation of the Municipality supported by a resolution passed by a majority of the Councillors present at a special general meeting called for the purpose is an essential pre-requisite to the exercise of the right of the Provincial Government to veto the continuance in office of the Chief Officer. Consequently, there must be a subsisting recommendation of the Municipality before the Provincial Government can in its discretion pass an order under section 54 vetoing the continuance in office of the Chief Officer. If the basic recommendation is itself lawfully withdrawn at any time before the power to veto is actually exercised by the Provincial Government, it would follow as a necessary corollary that the right to exercise this veto automatically terminates. Ordinarily, all deliberative assemblies have a right to do and undo, consider and reconsider as often as they think proper at their meetings and it is the result only which is looked at (Grainger's Law of Municipal Corporation in British India, page 163). In the present case, since the Municipality has lawfully cancelled its previous resolution No.305, dated 25th October 1940, there is no subsisting recommendation of the Municipality on the strength of which the Provincial Government can validly proceed with the inquiry and exercise the discretionary power to veto the continuance in office of the Chief Officer. Consequently the inquiry in this case will have to be dropped.

-d/-[illegible] 25/11
Remembrancer of Legal Affairs.

No. [illegible], No. 10196, dated the 27th November 1941.

[illegible] 17/5/40.

Office of the [illegible].

In his last opinion No.4820, dated the 28th May 1941, the Remembrancer of Legal Affairs has opined that where a projection is so located in the space above the surface of municipal land or street as to affect the municipality's interest in the land or street it will be for the municipality to levy the fees under the provisions of section 90 of the Bombay Municipal Boroughs Act, 1925. This relates to projections in general on the municipal lands and streets. Section 143(1) covers only a class of projections over public streets. If any projection does not fall either under the particular class under section 143 or under the general class of projections for which the municipality can levy fees, then the right to levy fees in respect of such projection would vest in Government as owner provided, of course, that the projection in question interferes with the proprietary rights of Government. It appears that the words "under (2)" in the last but one sentence in paragraph 6 of D.[illegible],S.D's note at p.9 ante appear to be a slip for the words "outside (1) and (2)". The decision of Government being administrative, it could be contested in a court of law not only the municipality but also by any other aggrieved party. Subject to what is stated above, the view expressed by D.S.,S.D. in his note is correct.

Sd/-K.H.M. 5/12
Remembrancer of Legal Affairs.

Sd/-[illegible].
5/12

U.O. to S.D., No. 10518, dated the 6th December 1941.

S.M.-. 17/5/ 4c.

Office of the A.I.G.

seen and returned.

2. The view taken by the Deputy Secretary, General Department at page 51 ante to the effect that it is not possible to suspend an order or a resolution, which has already been completely executed is correct, for, in such a case, there survived nothing the execution of which could validly or usefully be suspended or the doing of which could be prohibited within the meaning of section 214(1) of the Bombay Municipal Boroughs Act, 1925 so as to restore the status quo ante. Cf. Remembrancer of Legal Affairs No.264-Confl. dated the 5th November 1940.

Sd/-I.N.A. 12/12
Remembrancer of Legal Affairs.

No. to A.G., No. 10735 , dated the 12th December 1941.

D.K.C. 17/9/ 40.